IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13751 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HETALBEN JITENDRAKUMAR VYAS - Petitioner(s)

Versus

POLICE INSPECTOR - Respondent(s)

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Appearance :

MS HINA DESAI for Petitioner(s) : 1,
MR KAMAL TRIVEDI, ADDL. A.G. With MS SANGEETA VISHEN for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 4 - 6.
MR JJ YAJNIK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 27/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

The petitioner has mainly approached this court with a grievance that there is no policy restraining the citizens from bursting crackers on public streets and,

therefore, it has been prayed in the petition that the respondents should be directed to frame some policy restraining or regulating bursting of crackers on public streets/roads.

2. The circumstances in which the petitioner has approached this court, in a nutshell, are as under:

2.1 On 10.2.2003, when the petitioner was passing through a road in Sabarmati area of Ahmedabad with her son Aryan, aged about 2 ½ years, a marriage procession of son of respondent No. 5 was passing through the said road and the members of the procession were also bursting fire crackers on the road as a part of celebration. All of a sudden, one of the fire crackers bursted in such a way that it hit and damaged one of the eyes of the petitioner's son, named, Aryan. The child started bleeding from his right eye and he had to be rushed to a hospital. In spite of all possible efforts of the doctors, Aryan lost sight of his right eye. The doctors treating the child have opined that the child will never have vision in the eye which has been lost due to the damage caused by the cracker. It has been stated by the petitioner that she had spent substantial amount of money for treatment of the child, but all her efforts were in vain as the child is unable to see through the damaged eye even today.

2.2 In the aforesaid circumstances the petitioner has approached this court with a prayer that the government authorities should be directed to frame a policy or enact some rules and regulations banning bursting of crackers on public streets/roads and

Respondents Nos. 4 and 5 should be directed to pay compensation to the petitioner.

3. Looking to the nature of litigation, the learned single Judge before whom the petition was notified for hearing directed that the petition should be treated as a public interest litigation and, therefore, this petition has been placed before this court.

4. We have heard the learned advocate for the petitioner and learned Addl. Advocate General Shri Kamal Trivedi appearing with AGP Ms Sangita Vishen for the government authorities. In spite of service of notice of this court upon respondents Nos. 4 and 5, the parents of the bride and the bridegroom, they have preferred not to appear before this court.

5. Upon perusal of the averments made in the petition, which have been supported by medical certificates issued by medical officers of a government as well as a private hospital, correctness of the averment made in the petition regarding permanent damage caused to the right eye of the child cannot be doubted. In absence of any denial to the averments regarding the damage caused to the child's eye, we come to the conclusion that the child has lost his right eye as a result of the aforestated mishap.

6. In pursuance of notice issued by this court, an affidavit-in-reply has been filed by respondent No. 1 denying that there is no policy banning or regulating bursting of crackers on public streets. It has been stated that, in pursuance of powers given to the

Commissioner of Police, Ahmedabad City, under the provisions of sec. 33 of the Bombay Police Act, an order dated 13.11.1997 had been issued by him, whereby it has been ordered that crackers should not be bursted on public streets in the city of Ahmedabad during marriage processions or religious, social or political meetings. The Police Inspector, Sabarmati Police Station, in his affidavit-in-reply, has also submitted that an FIR had been filed by the petitioner on 11.2.2003 and in pursuance of the said FIR, investigation had been initiated by him.

7. Alongwith an affidavit dated 25.3.2004, the Dy. Commissioner of Police, Traffic Branch, Ahmedabad City, has annexed a copy of the order issued by the Police Commissioner, Ahmedabad City, dated 13.11.1997, whereby bursting of crackers on footpaths and public streets during marriage processions, religious and social meetings has been banned. In the said affidavit, he has further stated that no permission for bursting of crackers on public streets is being granted by the authorities.

8. In the course of hearing of the petition, it was felt that the aforestated order issued by the Commissioner of Police was not given due publicity and therefore the respondent authorities were directed to give due publicity to the said order. Accordingly due publicity was given to the said order dated 13.11.1997 and an affidavit stating the said fact was filed on 17.4.2004 by the Dy. Commissioner of police, Traffic Branch, Ahmedabad City, It has been stated in the said affidavit that the contents of the said order had been published practically in all leading newspapers and even contents of the said order had been telecast through Doordarshan. Moreover,

banners stating that bursting of crackers is banned had been also displayed at several prominent places in Ahmedabad City. Thus, all possible efforts were made by the respondent government authorities to see that people are informed about the order dated 13.11.1997, whereby bursting of crackers has been banned on public streets. It has been further stated that people were also informed that bursting of crackers on public streets is an offence. Copies of the press notes released by the government authorities have been annexed to the said reply. At the time of hearing of the petition, the learned Addl. Advocate General has further submitted that the people residing in other parts of the State shall also be informed that bursting of crackers on public streets has been banned as stated hereinabove so that people may not burst crackers on public streets for the purpose of celebrating such events.

9. In view of the statements made by responsible police officers in the affidavits filed before this Court as well as upon recording statement of the learned Addl. Advocate General, we are satisfied that due efforts are being made to see that bursting of crackers at public streets has not only been banned, but sufficient efforts are also being made to see that people are being about the said restriction.

10. Moreover, The Environment (Protection) Rules, 1989 (hereinafter referred to as '**the Rules**") are very much in existence which also deal with control and regulation of noise pollution. Bursting of crackers also pollute the environment and, therefore, item No. 89 in Schedule I to the said Rules provide as under:

"89. Noise Standard for Fire-crackers

A. (i) The manufacture, sale or use of fire-crackers generating noise level exceeding 125dB(AI) or 145dB(C)pk at 4 meters distance from the point of bursting shall be prohibited.

(ii) For individual firecrackers constituting the series (joined fire-crackers), the above mentioned limit be reduced by 5 log 10 (N)dB, where N=Number of crackers joined together."

11. In addition to the above-stated Rules governing noise level of the fire-crackers, the Hon'ble Supreme Court had an occasion to deal with the noise pollution created by the fire-crackers In Re. Noise Pollution [AIR 2005 SC 3136]. While giving final directions in relation to fire-crackers, the Hon'ble Supreme Court has observed in para 168 as under:

"xxx xxx xxx

4. There shall be a complete ban on bursting sound emitting firecrackers between 10 pm and 6 am. It is not necessary to impose restrictions as to time on bursting of colour/light emitting firecrackers.

5. Every manufacturer shall on the box of each firecracker mention details of its chemical contents and that it satisfies the requirement as laid down by DOE, In case of a failure on the part of the manufacturer to mention the details or in cases where the contents of the box do not match the chemical formulae as stated on the box, the manufacturer may be held liable.

6. Firecrackers for the purpose of export may be manufactured bearing higher noise levels subject to the following conditions: (i) The manufacturer should be permitted to do so only when he has an export order with him and not otherwise; (ii) The noise levels for these firecrackers should conform to the nose standards prescribed in the country to which they are intended to be exported as per the export order; (iii) These firecrackers should have a different colour packing, from those intended to be sold in India; (iv) They must carry a declaration printed thereon something like 'not for sale in India' or 'only for export to country AB' and so on."

12. The above facts denote that there are sufficient legal provisions regulating manufacturing and bursting of fire-crackers and, therefore, there is no need to give any direction to the respondent government authorities for framing any policy with regard thereto as prayed for in the petition. It has been however submitted by the learned advocate appearing for the petitioner that the aforesaid provisions are not much known to people at large and, therefore, the said provisions are often violated. We find substance in what has been submitted by the learned advocate and, therefore, we direct the Secretary, Home Department, that he should give directions to the concerned officers, who are concerned with issuance of licences for manufacturing or dealing in firecrackers that the firecrackers manufactured or sold by them should not be such which would make noise above the level prescribed in the aforesaid Rules. In the licence, which might be issued, the aforesaid condition should be incorporated and the officers concerned with implementation as well as supervision should see that the firecrackers are not sold in violation of any of the provisions of the aforesaid Rules and the final directions given by the Hon'ble Supreme Court. He is further directed to see that an overall restriction with regard to bursting of firecrackers on pubic streets is imposed in the entire state and due publicity to the said restriction is given.

13. The aforesaid direction shall be given by the Secretary, Home Department, to the concerned officers as soon as possible and preferably within four weeks from the date of receipt of the writ of this order by him.

14. Looking to the uncontroverted facts of the case, it is clear that a small child

Aryan has lost his right eye only on account of bursting of crackers by the members of the marriage procession. Respondents nos. 4 and 5, the parents of the bride and the bridegroom, though served with the notice of this court, have not preferred to appear before this court and that also denotes that they do not dispute the said fact.

15. Looking to the peculiar facts of the case, and more particularly in view of the fact that a young child, who is now about 5 years old, has lost his right eye permanently, and as the averments made in the petition supported by medical certificates have not been controverted by respondents nos. 4 and 5, as a special case, we award a sum of Rs. 15,000/- as costs/damages to the petitioner. The said sum shall be paid by respondents Nos. 4 and 5 jointly and severally within one month from the date of receipt of the writ of this court by them. Be it recorded that the said sum of Rs. 15,000/- is not awarded by way of total damages. It would be open to the petitioner or any of the guardians of Aryan to take appropriate legal recourse for recovery of amount of damages from the said respondents or from any other concerned person because, as per averments made in the petition, approximately Rs. 40,000/- have already been spent by the petitioner for treatment of Aryan.

16. A copy of this judgement shall be forwarded to the Secretary, Home Department of the State of Gujarat as well as to the Director General of Police, Gujarat State so as to enable them to do the needful.

In view of the above order, the petition is partly allowed. Rule is made absolute to the above extent with costs as quantified hereinabove.

(Anil R. Dave, J.)

(P.B. Majmudar, J.)

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